FILED
APR 30 1974

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1973

No. 73-1450

In the Matter of RALPH E. COREY, *Petitioner*

BRIEF FOR RESPONDENT STATE OF HAWAII

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BRIEF FOR RESPONDENT STATE OF HAWAII

OPINION BELOW

The opinion of the Supreme Court of Hawaii is reported at 54 Haw ....., 515 P.2d 400 (1973).

JURISDICTION

The jurisdiction requisites are adequately set forth in the petition.

QUESTIONS PRESENTED

A. Did the Petitioner receive a fair notice of the charges against him when he was served with an order

to show cause why he should not be disciplined on the basis of the record in a prior civil case in which a jury found him guilty of fraud, and further was served with a detailed specification of the portions of that record which evidenced his fraudulent conduct?

B. Was Petitioner's constitutional right to confrontation violated by the admission in the disciplinary proceeding of portions of the prior civil record evidencing his fraudulent conduct when (a) in the prior proceeding he fully exercised his right to cross-examine; and (b) in the disciplinary proceeding he was afforded an opportunity to call the same or additional witnesses and elected not to do so?

C. Was Petitioner denied his right to an impartial tribunal because the Justices of the Supreme Court of Hawaii were familiar with his difficulties as a result of their review of the prior fraud litigation when there was no showing of bias which was extrajudicial or personal?

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment provides in relevant part:

> "[i]n all criminal prosecutions, the accused shall enjoy the right to a . . . trial, by an impartial jury . . . and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him, . . ."

The Fourteenth Amendment provides in relevant part:

". . . nor shall any State deprive any person of life, liberty, or property, without due process of law . . ."

STATEMENT OF THE CASE

A. The Petitioner's Fraud

In November 1963, Petitioner, a Hawaii attorney and an officer and principal shareholder of Kauaian Development Co., Inc., approached State Savings and Loan Association in order to secure a loan to enable Kauaian Development to construct a hotel condominium project. (R. 80-82)

In connection with the loan application, Petitioner represented that the cost of constructing the improvements was a contruction contract in the amount of $761,000.00 plus $60,000.00 for certain extra items. *(Ibid.)*

This figure was relied on by State Savings in making a loan of $857,000.00 in accordance with a commitment to lend an amount not exceeding 65% of the appraised value of the completed project or 65% of the appraised value of the land plus construction costs, whichever was less. *(Ibid.)*

Although Petitioner represented through his direct action that the construction cost was $761,000.00 plus, in reality the actual construction contract was $600,000.00 plus $60,000.00 worth of apartments. (R. 83-84)

The contract for $761,000.00 plus was not for the purpose of actual construction but was executed "for

financing purposes only." Petitioner, fully aware of this, nonetheless made the fraudulent representation in order to obtain a larger construction loan than would have otherwise been possible. (R. 84-85)

Sometime after the loan was made, Kauaian Development defaulted and in 1966 State Savings instituted a mortgage foreclosure suit. (R. 94) During the trial of that action State Savings learned for the first time the true amount of the construction contract. It accordingly instituted a civil fraud action against Petitioner and two of his associates. (R. 99-100) At a trial of that action in 1969, a jury awarded State Savings $109,694.10 against Petitioner and one of his associates on the fraud count. This amount represented the difference between the unpaid balance of the loan and the amount paid by State Savings for the property at a court-ordered auction. The trial court ordered a new trial on the issue of damages under the fraud count but, before the new trial, appeals and cross-appeals were taken and the Supreme Court of Hawaii reinstated the jury's verdict, noting that Petitioner's conduct in the case raised serious questions of impropriety.[1]

After discovery of Petitioner's fraud, the Vice President of State Savings and its attorney filed complaints with the Supreme Court of Hawaii which were duly referred to the Rule 16 Commission of the Hawaii Bar Association. (R. 100-101; 104-106) When the Commission for various reasons had failed to proceed

[1] *State Savings & Loan v. Corey*, 53 Haw. 132, 488 P.2d 703 (1971), cert. denied. 406 U.S. 920 (1972).

by the time of the Court's decision in the *State Savings* case, it recommended that under the circumstances the Court should proceed with appropriate disciplinary proceedings on its own motion. (R. 113-114)

B. The Disciplinary Proceeding

On August 29, 1972, the Supreme Court of Hawaii issued and caused to be served on Petitioner an order to show cause directing Petitioner to file a written statement on or before October 2, 1972, showing cause why he should not be censured, suspended, or disbarred on the basis of the record in the *State Savings* case. The Attorney General of Hawaii was requested to appear in the proceedings as amicus curiae. (R. 1-2)

Petitioner failed to file a response on October 2, 1972, and instead filed a "Suggestion of Disqualification" and a request for a stay. (R. 6-8)

In response to Petitioner's request for a stay, the Court extended the time to file the written statement until October 10, 1972. (R. 17-18) On that date Petitioner filed a response which raised various legal defenses and denied the allegation that he had defrauded State Savings. (R. 40-49)

A preliminary hearing was held by the Court on November 15, 1972. (R. 71)

As a result of that hearing the Supreme Court of Hawaii ordered that it would consider relevant portions of the *State Savings* case and further ordered as follows:

"6. The Attorney General, or his deputy appearing in this matter, shall, on or before December 15, 1972, serve upon the Respondent's attorney and file with the clerk of this court a specification of such portions of the transcript and exhibits in *State Savings and Loan Association v. Corey and Kimbrough, No. 5021,* as, in his opinion, would support action by this court in censuring, suspending or disbarring Respondent, together with a Memorandum of Law in support of such opinion.

"7. Respondent shall, on or before February 1, 1973 serve upon the Attorney General and file with the clerk of this court a specification of such portions of the transcript and exhibits in *State Savings and Loan Association v. Corey and Kimbrough, No. 5021,* as, in his opinion, indicate that this court should not censure, suspend or disbar Respondent, *together with such offer of proof as Respondent may wish to make in additional support of Respondent's position,* together with a memorandum of law in support of Respondent's opinion, it being understood that the Attorney General or his deputy shall have the burden of proof in justifying disciplinary action against Respondent." (R. 77-78) (Emphasis added.)

In response to said order, on December 15, 1972, the Attorney General filed a detailed specification of those portions of the *State Savings* record which evidenced Petitioner's fraud. (R. 79-89)

On April 16, 1973, four months after he was served with a copy of the Attorney General's specifications, Petitioner filed his response thereto. (R. 158) He spe-

cified portions of the *State Savings* record which he asserted supported his position but made no offer of proof whatsoever with respect to any additional evidence which he believed supported his position. (R. 158-514)

The Petitioner having filed no offer of proof, the matter was set for oral argument on October 4, 1973. (R. 517) On October 19, 1973, the Supreme Court of Hawaii issued its opinion finding Petitioner guilty of fraud and suspending his license to practice law for six months. (R. 525-534)

ARGUMENT

A. PETITIONER WAS AFFORDED A FULL AND FAIR NOTICE OF THE CHARGE AGAINST HIM

Petitioner's initial argument for granting the writ is that the Supreme Court of Hawaii did not afford him notice as to (a) what conduct was the focus of the disciplinary proceeding; and (b) what standard his conduct was to be measured by. This he contends is contrary to *In re Ruffalo,* 390 U.S. 544 (1968).

Petitioner plainly was afforded the notice required by *Ruffalo.*

He was served with an Order to Show Cause why he should not be disciplined on the basis of the record in *State Savings & Loan Association v. Corey and Kimbrough, No. 5021,* a proceeding in which a jury found him guilty of civil fraud.

The entire focus of that case, as far as Petitioner was concerned was whether he had defrauded a savings and loan institution by intentionally misrepresenting the cost of construction of a hotel-condominium in order to obtain a larger construction loan than would otherwise have been possible. The precise conduct by which Petitioner perpetrated the fraud is set forth in the *State Savings* record.

In addition, prior to his opportunity to offer evidence before the Supreme Court of Hawaii, Petitioner was served with a detailed specification of those portions of the *State Savings* record which evidenced his fraudulent conduct. (R. 79-86)

It is simply absurd to suggest as Petitioner does that he was not apprised of what conduct on his part was the subject of the inquiry. The reference to the record and subsequent specifications by the Attorney General fully apprised Petitioner of the conduct in question and provided him the fair notice of the charge required by *Ruffalo.*

Further, this case plainly does not involve the constitutional infirmities which required reversal in *Ruffalo.* There the attorney had been charged with soliciting Federal Employers' Liability Act plaintiffs through an agent, one Orlando, who was a railroad employee. At the hearing the attorney and Orlando testified that Orlando merely investigated rather than solicited cases. Thereafter the charge was amended to allege that the attorney hired Orlando to investigate Orlando's own employer. This Court held that the proceedings became a trap when after they were under-

way the charges were amended based on the testimony of the accused.

Here there was no amendment of the charges. Petitioner knew from the outset that he was accused of defrauding the savings and loan institution. And this conduct was the basis for his suspension.

Ruffalo does not hold as Petitioner states that procedural due process requires that he be notified prior to the proceeding of any specific cannon violated by his fraudulent conduct. And Petitioner has cited no other authority for that proposition. Indeed, it is the rule in Hawaii as in many other jurisdictions that to hold an attorney answerable for unprofessional conduct it is unnecessary that his offense be spelled out in some particular provision of a code of ethics or statute. *In re Trask,* 46 Haw. 404, 380 P.2d 751 (1963); *In re McBride,* 164 Ohio St. 419, 132 N.E.2d 113 (1956); cert. den. 351 U.S. 965; *In re Cox,* 164 Kan. 160, 188 P.2d 652 (1948); *State Bar of Michigan v. Hartford,* 282 Mich. 124, 275 N.W. 791 (1937). This Court has long held that any conduct on the part of an attorney which evidences his unfitness and character as an attorney is grounds for discipline. *Ex parte Wall,* 107 U.S. 265 (1882); *Selling v. Radford,* 243 U.S. 46 (1917).

Moreover, here Petitioner was specifically informed, prior to his opportunity to submit evidence, that conduct amounting to fraud necessarily reflected on his professional character. Indeed, he was put on notice that under the law of Hawaii no specific provision of

the canons or elsewhere need be pointed to. (R. 88-89)

Petitioner was not prejudiced when the Hawaii Supreme Court later noted in its opinion that fraudulent conduct such as Petitioner's violated a number of ethical canons. He obviously had no legal defense which notice of those canons would have enabled him to make. Petitioner does not contend that fraud doesn't constitute professional misconduct. The canons mentioned by the Court do not contain any different or specific standards by which his conduct was measured. This is not a criminal case where notice of the specific statute is necessary in order for the defendant to be apprised of each specific element of the crime and of any defenses of it. The canons are intended as a guide to professionals. They set forth standards of conduct only in the most general terms. The preamble to the canons Petitioner violated provides:

> "No code or set of rules can be framed, which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life. The following canons of ethics are adopted by the American Bar Association as a general guide, yet the enumeration of particular duties should not be construed as a denial of others equally imperative, though not specifically mentioned."

Here Petitioner was afforded a full and detailed notice of the fraudulent conduct which constituted the basis of the Court's action. He was further informed that such fraudulent conduct was grounds for disci-

plinary action. This certainly satisfied the requirements of procedural due process.

B. PETITIONER WAS AFFORDED AN OPPORTUNITY TO CONFRONT HIS ACCUSERS AND CHOSE NOT TO DO SO

Petitioner next complains that the Supreme Court of Hawaii denied him any opportunity to examine Brown (an officer of the savings and loan institution), Campbell (the attorney for the savings and loan institution), and Young (his codefendant in the civil fraud trial). This Petitioner says denied him his right to procedural due process, including his rights under the Confrontation Clause.

This simply mistates the record.

The Supreme Court of Hawaii, after preliminarily ruling that portions of the *State Savings* record which were relevant to the question of Petitioner's fraud could be admitted in the disciplinary proceeding, apprised Petitioner that he could submit:

> ". . . such offer of proof as Respondent may wish to make in additional support of Respondent's position, . . . it being understood that the Attorney General or his deputy shall have the burden of proof in justifying disciplinary action against the Respondent." (R. 77-78)

The Supreme Court of Hawaii made it clear that the record in the *State Savings* case was admissible but that Petitioner could offer such further proof which he believed supported his position.

Petitioner never made any such offer. The case remained a paper case because Petitioner chose that it remain so. The inference which can be drawn from Petitioner's choice is inescapable. He did not believe he would benefit from further litigation of the facts surrounding his fraud.

If Petitioner had such a burning desire to attack Brown's assurance that he relied on Petitioner's misrepresentations or to challenge the testimony of his former co-defendant Young, why didn't he at least make an offer of proof in this regard. He may not now complain that he was denied a right which he deliberately chose not to exercise.

Even if this were a criminal case, the admission of the *State Savings* record by the Supreme Court of Hawaii would not violate Petitioner's rights under the Confrontation Clause under the standards announced by this Court in *California v. Green,* 399 U.S. 149 (1970). There this Court held that (1) the Confrontation Clause is not violated by the admission of a declarant's out-of-court statements as long as he is subject to full cross-examination at the trial; and (2) the Confrontation Clause is not violated, even in the absence of an opportunity for cross-examination at trial, if in the earlier proceeding the defendant had the opportunity to cross-examine.

Here, of course, Petitioner had and extensively exercised his right to cross-examine the witnesses in the *State Savings* case. In addition, he had the opportunity to examine them again in the disciplinary proceeding and elected not to do so. Either circumstance

would be sufficient to satisfy the requirements of *Green.*

And, of course, the admission of the testimony adduced in the civil fraud trial in the subsequent disciplinary proceeding was in accord with the evidentiary rule adopted by most jurisdictions which have considered the question. *People v. Howard,* 364 P.2d 380 (Colo. 1961), cert. den. 369 U.S. 819; *Louisiana State Bar Ass'n v. Sackett,* 231 La. 655, 92 So.2d 571 (1957); *In re Santosuosso,* 318 Mass. 489, 62 N.E.2d 105 (1945); *In re Lacy,* 234 Mo. App. 71, 112 S.W.2d 594 (1937).

Subsequent to the *Howard* case, the Tenth Circuit Court of Appeals, in affirming the District Court's disbarment of Howard based on the state proceedings, said:

> "Howard insists that the state proceedings denied him due process and the right of confrontation by the receipt of the records in the civil cases against him. This point was presented to the Colorado Supreme Court which upheld the use of the records. Recognizing that the state decisions are split on this issue, we find no denial of any constitutional rights. Howard was a party to the two civil cases and had full opportunity to examine and cross-examine the witnesses." *(Howard v. United States District Court for the District of Colorado,* 318 F.2d 521, 523 (10th Cir. 1963).

Hawaii did not adopt a "no testimony will be adduced" rule as Petitioner alleges. (Op. Br., p. 24) He had the opportunity to and in fact did cross-examine at length in the prior civil trial. He further had

the opporunity to call the same or additional witnesses in the disciplinary proceeding. His constitutional right to confrontation was not abridged.

C. PETITIONER WAS NOT DENIED HIS RIGHT TO AN IMPARTIAL TRIBUNAL

Petitioner's final argument is the most strained. He asserts that because the Justices of the Hawaii Supreme Court had previously reviewed the civil fraud case and had stated that his conduct there raised serious questions of impropriety, due process required that they excuse themselves in the disciplinary proceeding.

This misstates the law.

It is well established that even in a criminal action a judge is not disqualified by virtue of a former decision or expression in an earlier civil or criminal litigation involving related facts. *United States v. Dichiarinte,* 445 F.2d 126 (7th Cir. 1971); *United States v. Bolden,* 355 F.2d 453 (7th Cir. 1965); see, Annotation, *Disqualification of Judge For Having Decided Different Case Against Litigant,* 21 ALR 3d 1369 (1968).

Alleged bias and prejudice to be disqualifying must stem from an extrajudicial or personal source. *United States v. Grinnell Corp.,* 384 U.S. 563 (1966).

As the Court said in *United States v. Valenti,* 120 F.Supp. 76, 85 (E.D. N.Y. 1954):

> "The interdiction of the law is not the mere possession of definite views regarding the law, or the

> conduct of a party, or even a 'prejudgment' of the matters in controversy, but rather an attitude of personal enmity towards the party affiant, or in favor of the adverse party to the detriment of the former."

Here there is no indication whatever that any of the Justices harbored personal or extrajudicial bias toward the Petitioner. Their knowledge of his fraudulent conduct was extensive but it was acquired in the regular exercise of their judicial functions when they reviewed the *State Savings* record. Petitioner was a party to and vigorously defended that action. The Justices' familiarity with his difficulties was not extra-judicial.

Petitioner, however, makes much of an alleged ex parte surreptitious campaign to influence the Court. He indicates this campaign was successful because the Court failed to refer the charges to the Bar Association's Rule 16 Commission.

Again Petitioner misstates the record.

The so-called surreptitious campaign, insofar as Petitioner's fraud was concerned, consisted of a letter written to the Court by Mr. Brown, the victim of the fraud, on March 17, 1967. This was immediately referred to the appropriate committee of the Bar Association. (R. 100-101) The charge as set forth in Brown's letter was amended in a letter to the Court by Mr. Campbell, attorney for State Savings, written on October 11, 1969. (R. 104) This and a subsequent letter by Brown were also referred by the Court to the Bar Association's committee. (R. 104-106) Peti-

tioner was informed of the charges on October 22, 1969, prior to any action by the committee. (R. 106) Indeed, he Bar Association never took action. After numerous delays due to an inability to obtain attorneys to serve on the committee of inquiry, and in view of the fact that by that time the Court had reviewed the *State Savings* case, the Commission, on October 21, 1971, formally recommended to the Court that it proceed without awaiting a report from the Commission. (R. 113-114) The Court followed this recommendation.[2]

In short, the alleged "surreptitious campaign" consisted of nothing more than complaints to the Court by the victims of Petitioner's fraud. These were referred to the Rule 16 Commission in accordance with the Court's usual procedure. When the Rule 16 Commission had been unable to proceed by the time of the *State Savings* decision, it recommended that under the circumstances the Court should proceed independently. The Court thus had good reasons not to follow the normal procedures. It elected to do so, and acted solely on the basis of evidence, in the form of the *State Savings* record, adduced in the disciplinary proceeding. That evidence overwhelmingly supports the

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[2]Under the law of Hawaii, the Supreme Court is not bound to the Rule 16 procedure and may proceed on its own initiative and prescribe such procedure as it deems appropriate, subject only to the requirements of due process. *In re Trask*, 46 Haw. 404 (1963). Moreover, Rule 16(d) of its Rules then provided:

> "(d) *Limitations.* The jurisdiction of this court and the other courts of the State of Hawaii to grant appropriate relief in causes involving professional misconduct or unauthorized practice of law shall not be deemed to be limited, restricted or abrogated by anything contained in this rule."

charges against Petitioner. The record simply contains no basis for Petitioner's assertion that the well had been poisoned.

D. THE CASE IS UNIMPORTANT AND HAS LITTLE PRECEDENTIAL VALUE

Petitioner fails to offer any reasons for granting the writ other than his contention that the decision is wrong.

There are no such reasons. The imposition of a six-month suspension may be important to Petitioner, but it does not amount to a permanent loss of livelihood and is not so severe as to warrant the time and attention of this Court.

More importantly, this case quite obviously turns on its individual facts. The procedure followed by the Supreme Court of Hawaii was necessitated by the unique circumstances of this case. The Bar Association's Rule 16 Commission after a long delay had been unable to act and had specifically recommended that the Court proceed independently of Rule 16. Further, the Court in exercising its judicial functions had already become familiar with Petitioner's fraudulent conduct. Accordingly, it acted under its inherent power to regulate the conduct of attorneys. This was in accord with Rule 16(d) of its rules then in effect which provided that nothing in the rule limited the inherent power to grant appropriate relief in cases of professional misconduct. That rule has since been amended. See Appendix E to the Petition. It is cer-

tainly unlikely that this procedure would be followed in future cases.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Dated, Honolulu, Hawaii,
April 23, 1974.

Respectfully submitted,

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State of Hawaii.

(Appendices Follow)

Appendix A

In the Supreme Court of the State of Hawaii
October Term 1973

In the Matter of Ralph E. Corey,
Attorney at Law

No. 5344

[Filed October 19, 1973]

RICHARDSON, C.J., ABE, LEVINSON and KOBAYASHI, JJ., and CIRCUIT JUDGE VITOUSEK in place of MARUMOTO, J., Recused

Attorney and Client—jurisdiction of courts.

The supreme court has authority over matters concerning disciplinary action of members of the bar.

Same—character and conduct.

Active participation in fraud or even silence of an attorney where he has knowledge of the current perpetration of a fraud by his client upon another is professional misconduct which merits disciplinary action by the court.

Same—same.

An attorney engaged in practice of law is held to the same highest standards of ethical and moral

uprightness and fair dealing when acting as a businessman or when acting as a lawyer and is subject to disciplinary action if he fails to maintain those standards in either capacity.

Same—same.

While commercial activities are not forbidden a lawyer, he must see that his dealings as a businessman are as upright as should be his dealings in his professional capacity.

Per Curiam. This is an original proceeding initiated by this court on an order to show cause issued by this court ordering respondent Ralph E. Corey, Esq., to file a written statement showing cause why he should not be censured, suspended, or disbarred from all the courts of the State of Hawaii based on the record of the case entitled *State Savings and Loan Association v. Ralph E. Corey and Robert M. Kimbrough and Wallace C. S. Young,* No. 5021. The attorney general of the State of Hawaii was requested, personally or through a deputy, to appear in the proceeding as amicus curiae.

By order of this court filed November 16, 1972, this court ordered, *inter alia,* as follows:

a. Respondent's request for permission to inspect the records and files of the Supreme Court Rule 16(c) Commission relating to this matter is granted;

b. The attorney general, or his deputy appearing in this matter, shall serve upon the respond-

ent's attorney and file with the clerk of this court a specification of such portions of the transcript and exhibits in said State Savings case, No. 5021, as, in his opinion, would support action by this court in censuring, suspending or disbarring respondent, together with a memorandum of law in support of such opinion;

c. Respondent shall serve upon the attorney general and file with the clerk of this court a specification of such portions of the transcript and exhibits in said State Savings case, No. 5021, as, in his opinion, indicate that this court should not censure, suspend or disbar respondent, *together with such offer of proof as respondent may wish to make in additional support of respondent's position,* together with a memorandum of law in support of respondent's opinion, *it being understood that the attorney general or his deputy shall have the burden* of proof in justifying disciplinary action against the respondent. (Emphasis added.)

The specifications and memoranda of law were filed by the attorney general and the respondent. However, though given the opportunity, the respondent failed to file any offer of proof which would additionally support respondent's position herein.

This court has jurisdiction over matters concerning disciplinary action of members of the bar. HRS § 605-1, as amended by Act 184, sec. 1(a), S.L.H. 1972.

After a thorough and complete review of the record of said case we are of the opinion that respondent is guilty of misrepresentation amounting to fraud and thus as an attorney is guilty of professional misconduct. The record of said case shows that respondent, who was a substantial shareholder, a corporate officer (vice president) and corporate attorney of Kauaian Development Company, a corporation, committed said misrepresentation in his effort to obtain for said corporation a mortgage loan from State Savings and Loan Association for the construction of a hotel-condominium.

A brief summary of the facts herein is as follows:

Respondent, as attorney and corporate officer, was fully aware of the fact that there were two construction contracts:

1. Construction contract dated October 28, 1963, stating in pertinent parts as follows:

> WITNESSETH, that the Contractor [Better Built Hawaii, Ltd.] and the Owner [Kauaian Development Company, Inc.] for the considerations hereinafter named agree as follows:
>
> . . . .
>
> The Contractor shall furnish all of the materials and perform all of the work shown on the Drawings and described in the Specifications entitled "The Kauaian Hyatt House" prepared by . . ., acting as and in these Contract Documents entitled the Architect; and shall do everything required by this Agreement, the General Conditions of the Contract, the Specifications and the Drawings.
>
> . . . .

> The Owner shall pay the Contractor for the performance of the Contract, subject to additions and deductions provided therein, in current funds as follows: SEVEN HUNDRED SIXTY-ONE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS ($761,500.00). THE OWNER SHALL HAVE THE OPTION TO PAY THE CONTRACTOR AN ALTERNATE CONTRACT AMOUNT OF: COST PLUS 7%, COST BEING DETERMINED BY STANDARD A.I.A. ACCOUNTING PROCEDURE.

2. Construction Contract dated November 8, 1963, executed by and between Better Built Hawaii, Ltd., as contractor, and Kauaian Development Company, Inc., as owner, stating as follows:

> It is agreed between Better Built Hawaii, Inc. and Kauaian Development Company, Inc. that a new cost figure has been reached relative to the Kauaian Hyatt House and subject price is now $600,000 total cost for all contractual work, including rock wall and fill and pier facilities. In addition, an agreement is reached whereby any savings under $600,000 will be divided equally between Better Built Hawaii, Inc. and Kauaian Development Company, Inc. In addition, Mr. Emil A. Offer, and/or Better Built Hawaii, Inc. will receive $60,000 worth of apartments in the Kauaian Hyatt House upon completion of the contract.

The construction contract dated October 28, 1963, was not for the purpose of actual construction but was executed only for the purpose of obtaining construction financing from State Savings and Loan Association. However, State Savings and Loan Association was not informed that said construction contract was

for financing purpose only and not for actual construc
tion purposes and was led to believe that the said
contract was the actual construction contract. The
actual contract for construction purposes was the
contract dated November 8, 1963. Notwithstanding
the existence of the actual construction contract, re
spondent as said corporate attorney and corporate
officer represented to State Savings and Loan Asso
ciation that the cost of construction of the improve
ments was determined on the construction contract
referring to a maximum amount of $761,000.00, and
respondent failed to inform and/or cause to have the
said mortgagee informed that the actual construction
contract cost was $600,000.00 plus rather than prem
ised on the contract referring to the sum of
$761,000.00. Said representation by respondent was
by direct actions and also by way of acquiescence
through silence on the part of respondent during
various meetings held with the mortgagee in their
discussions, negotiations and consummation of the
mortgage loan.

The record of the present proceeding substantiates
the fact to be that the purpose of respondent in fail
ing to inform the mortgagee of the actual cost of
construction in the sum of $600,000.00 plus was to
acquire a larger mortgage loan than would have been
possible if the actual construction contract had been
used for the financing purposes. Mortgagee, not know
ing of the actual construction contract and relying on
respondent's representation that the cost of construc
tion was determined on the contract referring to the

sum of $761,000.00, did on January 17, 1964, grant the mortgage loan in question to respondent's corporation.

The conduct of the respondent was in violation of the following canons of ethics which were in effect when said misrepresentation occurred:[1]

> Canon 15—How Far A Lawyer May Go in Supporting A Client's Cause. . . . The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicane. He must obey his own conscience and not that of his client.
>
> Canon 16—Restraining Clients from Improprieties. A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, ... If a client persists in such wrongdoing the lawyer should terminate their relation.
>
> Canon 29—Upholding the Honor of the Profession. . . . He should strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice.
>
> Canon 32—The Lawyer's Duty in Its Last Analysis. No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any lawyer render any service or advice involving disloyalty to the law whose ministers

[1]Under Rule 16(a) of the Rules of the Supreme Court of Hawaii which were applicable at the time the misrepresentation occured in November-December, 1963, the canons of professional ethics as adopted by the American Bar Association were in effect and are applied here.

> we are, or disrespect of the judicial office, wh
> we are bound to uphold, or corruption of a
> person or persons exercising a public office
> private trust, or deception or betrayal of
> public. When rendering any such improper se
> ice or advice, the lawyer invites and merits st
> and just condemnation. . . .

In a case involving the participation of an attor in the fraudulent sale of a bakery, the New Y Supreme Court, Appellate Division, found the att ney ". . . guilty of professional misconduct by rea of his active participation in the fraud, his sile when he knew the buyer was being defrauded and violation of a fiduciary relationship as escrow hol of the moneys paid by the buyer", and disbarred hi *In re Sherman,* 65 N.Y.S.2d 802, 803, 271 A.D. (1946).

> It is well settled that an attorney engaged
> practice of law is held to the same "high
> standards of ethical and moral uprightness a
> fair dealing" when acting as a businessman
> when acting as a lawyer and is subject to d
> ciplinary action if he fails to maintain th
> standards in either capacity. *Marco v. Dul*
> 169 F.Supp. 622, 631 (S.D.N.Y. 1959).
>
> While commercial activities are not forbidde lawyer, he "must see that his dealings as a bu ness man are as upright as should be his deali in his professional capacity" . . . . *Matter Chartoff,* 116 A.D.2d 277, 280, 227 N.Y.S.2d 5 581 (1962).

The above stated principles regarding the conduct of an attorney either in his professional capacity or as a businessman are those for which we find Mr. Corey has shown a complete disregard.

The respondent has failed to show cause why he should not be censured, suspended or disbarred. Issues raised in this proceeding by respondent are without merit.

We therefore, based on the record herein, suspend his license to practice law before all the courts of the state of Hawaii for a period of six months effective thirty days after entry of judgment in this case by this court.

William S. Richardson

Kazuhisa Abe

Bernard H. Levinson

Bert T. Kobayashi

Betty M. Vitousek

Helen B. Ryan (Ryan and Ryan of counsel) for respondent.

E. John McConnell, Jr., Deputy Attorney General (George Pai, Attorney General, of counsel) for State of Hawaii, amicus curiae.

Appendix B

No. 5344

In the Supreme Court of the State of Hawaii
October Term 1973

In the Matter of
Ralph E. Corey,
Attorney at Law

[Filed Nov. 28, 1973]

JUDGMENT

George Pai 609,
Attorney General,
State of Hawaii,

E. John McConnell, Jr. 782,
Deputy Attorney General,
State of Hawaii,
Hawaii State Capitol,
415 South Beretania Street,
Honolulu, Hawaii 96813,
Tel. No. 548-4740,
Attorneys for State of Hawaii

No. 5344

In the Supreme Court of the State of Hawaii

October Term 1973

In the Matter of
Ralph E. Corey,
Attorney at Law

JUDGMENT

Pursuant to the opinions of the Supreme Court of the State of Hawaii filed in this original proceeding on October 19, 1973 and November 5, 1973;

It Is Hereby Ordered, Adjudged and Decreed, that the license of respondent Ralph E. Corey, Esq., to practice law before all the courts of the State of Hawaii be suspended for a period of six months;

It Is Hereby Further Ordered, Adjudged and Decreed, that such suspension shall be stayed on the following terms:

a) that respondent, without delay, initiate his contemplated petition for writ of certiorari or appeal to the Supreme Court of the United States and expeditiously complete his requirements for said petition or appeal;

b) that the stay granted herein shall remain in effect until the conclusion of the review of the judg-

ment of this court by the Supreme Court of
United States;

c) that, in the event the Supreme Court of
United States denies respondent's petition for a w
of certiorari or appeal or sustains the judgment
this Court in suspending respondent's license to pr
tice law, the said suspension shall become effect
thirty days from the date of said denial or order
the Supreme Court of the United States.

Dated: Honolulu, Hawaii, Nov. 28, 1973.

By the Court:
Clement J. H. Chun
Clerk

Approved:
(Seal) Bert T. Kobayashi
Justice